

DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY *Malcolm Lawrence*

DATE *7/15/80*

RDS ☐ or XDS ☐ EXT. DATE

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June 20, 1972

Honorable J. W. Fulbright, Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In reply to your letter of June 13, 1972, I am glad to send you a copy of the reply of the Department of State to the letter of June 2, 1972 to the President from Professor A. Kunta (AVTORKHANOV) questioning the authority of Mr. Brezhnev to sign the anti-ballistic missile treaty and the interim agreement on the limitation of offensive arms concluded in Moscow May 26, 1972.

Sincerely yours,

John R. Stevenson
The Legal Adviser

Enclosures:

1. Copy of Br. Avtorkhanov's letter
2. Copy of Department's reply

CIB
L:L/T:CIB Evans:marie 6/16/72

x 21074

S/S No. 7209971

L - Mr. Brower *CIB*

EUR/SOV - Mr. Kamman *WWK*

ACDA - Mr. Hancock *WWK*

WWK
L/EUR - Mr. Russell

H - Mr. MacKenzie *WWK*

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June 20, 1972

Dr. A. Avtorkhanov
81 Garmisch-Partenkirchen
Breitenau 701/K
Federal Republic of Germany

Dear Dr. Avtorkhanov:

The President has brought to the attention of my office your letter of June 2, 1972 questioning the authority of Mr. Leonid Ilich Brezhnev to sign the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems and the Interim Agreement between the two States on Certain Measures with respect to the Limitation of Strategic Offensive Arms.

There is no rule of international law requiring that any particular officer or individual sign an international agreement. The only question, so far as legal considerations are involved, is either (1) whether the individual signing had authority by reason of his office or (2) whether he was duly authorized by the appropriate authority.

Mr. Brezhnev was duly authorized to sign the above-mentioned Treaty and Interim Agreement for the Union of Soviet Socialist Republics by full powers issued in the name of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics on May 26, 1972, signed by N. Podgorny, Chairman of the Presidium of the Supreme Soviet of the USSR, countersigned by A. Gromyko, Minister of Foreign Affairs of the USSR, and stamped with the seal of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics.

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As Mr. Brezhnev was duly authorized by the appropriate authorities under Soviet law and procedure to sign the Treaty and the Interim Agreement, the fact that he was designated in the full powers as "General Secretary of the Central Committee of the Communist Party of the Soviet Union" and that he signed both the Treaty and the Interim Agreement as "General Secretary of the Central Committee of the CPSU" does not derogate in any manner from the legal significance of his signature.

In view of these considerations, the Department of State considers Mr. Brezhnev's signature of the two instruments as valid without question.

Sincerely yours,

Charles I. Bevans
Assistant Legal Adviser

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MR
L/EUR - Mr. Russell

ACDA - Mr. Hancock *KWHL*

L - Mr. Brower *CIB*

EUR/SOV - Mr. Kamman *CK*

H - Mr. MacKee *MM*

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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

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June 13, 1972

LEGAL ADVISER

JUN 15 1972

DEPARTMENT OF STATE

The Honorable John R. Stevenson
Legal Adviser
Department of State
Washington, D.C.

Dear Mr. Stevenson:

The Committee on Foreign Relations received the attached letter recently from Professor A. Kunta (Avtorkhanov) on the signing of the U.S.-Soviet agreements in Moscow.

Professor Kunta argues that Mr. Brezhnev's signature is not authorized under the Soviet constitution on international agreements and that this fact could nullify the achievements in Moscow.

The Committee is planning to hold extensive hearings on the anti-ballistic missile treaty and the initial offensive agreement within the next several days. We would very much appreciate receiving your views on the validity of Professor Kunta's arguments before the hearings commence.

Sincerely yours,

J. W. Fulbright
Chairman

Enclosure

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The Bureau

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Prof. Dr. rer. pol. A. KUNTA (AVTORKHANOV)

GARMISCH-PARTENKIRCHEN

BREITENAU 701/K

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COMMITTEE ON

JUN 9 1972

FOREIGN RELATIONS

June 7th, 1972

Senator James William Fulbright, Chairman
U.S. Senate Committee on Foreign Relations
United States Senate
Washington, D.C. 20025

Dear Senator Fulbright:

I have the honor to forward you for your and your Committee's information and consideration a copy of my letter to the President of the United States, Mr. Richard M. Nixon.

In this letter I call the President's attention to the fact that since Mr. Leonid Brezhnev has committed a flagrant violation of his own country's constitution and fundamental laws when he signed the SALT and the ABM accords with Mr. Nixon, the above instruments are not only illegal under current Soviet constitutional law, but infact--also null and void even under the broadest and the most favorable interpretation of international law.

You are free to make whatever use of this letter you deem necessary.

Respectfully yours,

Avtorkhanov

Abdurakhman Kunta
(Avtorkhanov)

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Prof. Dr. rer. pol. A. KUNTA (AVTORKHANOV)

GARMISCH-PARTENKIRCHEN
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2 June 1972

The President
The White House
Washington, D. C. 20500

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Dear Mr. President:

As a long-time specialist in Soviet affairs, I consider it my duty to forewarn you concerning a blatant violation of the Soviet Constitution, committed by Mr. Brezhnev at the signing of the U.S.-Soviet accords, which can nullify all the main achievements of your admirable foreign political initiative.

The agreement between the United States and the Soviet Union concerning the limitation of development of anti-missile defense systems, and the interim agreement on the limitation of offensive strategic weapons, both signed in Moscow on May 28, 1972, are null and void under international law, as they have been concluded in flagrant violation of the Constitution of the U.S.S.R. Under the Soviet Constitution, the General Secretary of the Communist Party of the Soviet Union, L. Brezhnev, who signed the above accords with the President of the United States, Richard M. Nixon, is not legally empowered to contract any kind of obligations legally binding on the Soviet Union. Consequently, in view of the illegal manner of their conclusion, these agreements will not be binding on the Soviet Union even after their ratification by the Supreme Soviet of the U.S.S.R.

Articles 14, 30, 31, 64 and 68 of the Constitution of the U.S.S.R. state that the conclusion of international agreements is the exclusive prerogative of the Supreme Soviet of the Soviet Union, the Presidium of the Supreme Soviet of the Soviet Union, and the Council of Ministers of the Soviet Union.

The Constitution of the Soviet Union does neither mention nor grant any government authority to the General Secretary of the CPSU or even the Central Committee of the CPSU.

We all know, of course, that the General Secretary of the Communist Party is the actual governmental head of the Soviet Union, but this is de facto and not de jure. But even Stalin and Khrushchev clearly understood that constitutionally the General Secretary of the Communist Party had no authority in international state relations. To forestall potential constitutional conflicts, they also assumed the position of the Chairman of the Council of Ministers. Thus, when Stalin and Khrushchev signed international agreements, they signed them as the Chairman of the Council of Ministers of the U.S.S.R. making

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no reference to their position as General Secretary, CPSU. In the history of the Soviet state, there has never been a precedent in which an international agreement has been signed by the General Secretary of the CPSU.

At the October, 1964, Plenum of the Central Committee of the CPSU, which also removed Khrushchev from the position of First Secretary, CPSU, and head of the Soviet government, it was decided to separate henceforth the position of General Secretary, CPSU, from the position of head of the government. (See Istoriia KPSS/The History of the CPSU, Moscow, 1971, page 627.) This is the reason why Brezhnev, even to this day, has not taken the position of head of the Soviet government. Consequently, under the present Soviet Constitution, the only legal way for Brezhnev to sign any international agreement would be to do so as member of the Presidium of the Supreme Soviet of the USSR, provided of course he were so empowered by that body.

In a word, it appears that the United States has signed these agreements not with any official of the Soviet government, such as the Chairman of the Presidium of the Supreme Soviet of the USSR Podgorny or the Chairman of the Council of Ministers of the USSR Alexei Kosygin, but with a private individual who also happens to be the General Secretary of the Communist Party of the Soviet Union. It is as if President Nixon would have signed these instruments not as the President of the United States but as the head of the Republican Party.

Of course, the Soviet Constitution does contain a reference to the Communist Party. Article 126 asserts that the Communist Party is the "leading core of all organizations of the working people, both public and state." The article, however, does not confer any governmental function or authority upon the Party. Moreover, an official Soviet legal reference work categorically states that "in accordance with Article 14 of the Soviet Constitution, the conclusion of international agreements by the USSR is the prerogative of its highest organs of state power and the organs of state administration: The Supreme Soviet of the USSR, the Presidium of the Supreme Soviet of the USSR, and the Council of Ministers of the USSR." (Iuridicheskii slovar'/Juridical Dictionary, Volume I, Moscow, 1956, p. 274.)

For these reasons, and especially in order to eliminate the possibility of any doubt arising concerning the treaties' validity or binding nature, I strongly advise the U.S. Government to seek from the Soviet government some kind of definition or clarification of Mr. Brezhnev's full powers which enabled him to sign "For the Union of Soviet Socialist Republics."

Respectfully yours,

A. Avtorkhanov

CF:
Senate Foreign Relations
Committee

Dr. A. AVTORKHANOV, Author

The writer's books include: Staline au Pouvoir (Plon) Paris, 1951 and The Communist Party Apparatus, World Publishing Company, Cleveland/New York, 1968.